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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1H 2007 481

11 DAVID LEE
12 205 Myrtle Street
Bakersfield, CA 93304

A C C U S A T I O N

13
14 Respiratory Care Practitioner License No. 24148

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about February 9, 2005, the Respiratory Care Board issued
23 Respiratory Care Practitioner License Number 24148 to David Lee (Respondent). The
24 Respiratory Care Practitioner License expired on October 31, 2007, and has not been renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Respiratory Care Board (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 3710 of the Code states: “The Respiratory Care Board of
2 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
3 8.3, the Respiratory Care Practice Act].”

4 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
5 and revoke licenses to practice respiratory care as provided in this chapter.”

6 6. Section 118 of the Code states:

7 “(a) The withdrawal of an application for a license after it has been filed with a board in
8 the department shall not, unless the board has consented in writing to such withdrawal, deprive
9 the board of its authority to institute or continue a proceeding against the applicant for the denial
10 of the license upon any ground provided by law or to enter an order denying the license upon any
11 such ground.

12 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
13 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
14 order of a court of law, or its surrender without the written consent of the board, shall not, during
15 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
16 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
17 provided by law or to enter an order suspending or revoking the license or otherwise taking
18 disciplinary action against the licensee on any such ground.

19 “(c) As used in this section, ‘board’ includes an individual who is authorized by any
20 provision of this code to issue, suspend, or revoke a license, and ‘license’ includes ‘certificate,’
21 ‘registration,’ and ‘permit.’”

22 7. Section 3750 of the Code states:

23 “The board may order the denial, suspension or revocation of, or the imposition of
24 probationary conditions upon, a license issued under this chapter, for any of the following
25 causes:

26 “(d) Conviction of a crime that substantially relates to the qualifications,
27 functions, or duties of a respiratory care practitioner. The record of conviction or a
28 certified copy thereof shall be conclusive evidence of the conviction.

1 “(g) Conviction of a violation of any of the provisions of this chapter or of any
2 provision of Division 2 (commencing with Section 500), or violating, or attempting to
3 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
4 violate any provision or term of this chapter or of any provision of Division 2
5 (commencing with Section 500).

6 8. Section 3752 of the Code states:

7 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
8 made to a charge of any offense which substantially relates to the qualifications,
9 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
10 the meaning of this article. The board shall order the license suspended or revoked, or
11 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
12 conviction has been affirmed on appeal or when an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent order under Section
14 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
15 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
16 accusation, information, or indictment.”

17 9. California Code of Regulations, title 16, section 1399.370, states:

18 “For the purposes of denial, suspension, or revocation of a license, a crime or act
19 shall be considered to be substantially related to the qualifications, functions or duties of
20 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
21 perform the functions authorized by his or her license or in a manner inconsistent with the
22 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
23 those involving the following:

24 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
25 abetting the violation of or conspiring to violate any provision or term of the Act.”

26 COST RECOVERY

27 10. Section 3753.5, subdivision (a) of the Code states:

28 "In any order issued in resolution of a disciplinary proceeding before the board,

1 the board or the administrative law judge may direct any practitioner or applicant found to have
2 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
3 investigation and prosecution of the case."

4 11. Section 3753.7 of the Code states:

5 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
6 include attorney general or other prosecuting attorney fees, expert witness fees, and other
7 administrative, filing, and service fees."

8 12. Section 3753.1 of the Code states:

9 "(a) An administrative disciplinary decision imposing terms of probation may
10 include, among other things, a requirement that the licensee-probationer pay the monetary costs
11 associated with monitoring the probation. "

12 FIRST CAUSE FOR DISCIPLINE

13 (Substantially-related conviction)

14 13. Respondent is subject to disciplinary action under code sections 3750(d),
15 3750(g), 3752 [substantially related conviction] and CCR 1399.370(a) in that in 2007, he was
16 convicted of violating Penal Code section 12280(b) [willfully and unlawfully carrying a loaded
17 firearm in a public place.] The circumstances are as follows:

18 14. On or about August 23, 2007, Bakersfield Police Officers Joshua Finney
19 and Kyle Ursery of the Special Enforcement Unit observed a vehicle parked by a residence, and
20 the officers knew the residence was frequented by members of two criminal street gangs. The
21 officers were also aware that numerous firearms had been seized from the residence. The
22 officers approached the vehicle and illuminated the interior with their flashlights. They observed
23 J.D., a male individual who the officers knew to be a member of a criminal street gang and on
24 parole, and two other individuals. J.D. was seated in the driver's seat, and the officers observed
25 that he was not wearing a seatbelt. Officer Finney yelled at J.D. to exit the vehicle, so that he
26 could conduct a parole search. J.D. drove away. After chasing the vehicle for blocks, J.D.
27 jumped out of the vehicle while the vehicle was moving at a slow rate of speed. The vehicle then
28 stopped against a curb. The officers approached the vehicle, where they located respondent

1 seated in the rear passenger seat of the vehicle.

2 15. Officer Finney conducted a search of the vehicle, and he found an open
3 lunch box in the rear driver's side seat, which contained an Intratec 9 mm Luger automatic pistol,
4 a magazine loaded with 19 live rounds of ammunition, and a box containing 19 additional live
5 rounds of ammunition.

6 16. Officer Ursery advised respondent of his Miranda rights, and respondent
7 agreed to speak to the officers. Respondent stated that he had entered J.D.'s car a few minutes
8 prior to the officer's arrival on the scene, and that he was unaware of the firearm and ammunition
9 beside him in the car.

10 17. Respondent was arrested for the following Penal Code violations: section
11 12020(a)(1) [possess, manufacture, sell dangerous weapon], section 12021(d) [possession of a
12 firearm in violation of probation], section 12031(a)(1) [carry loaded firearm in a public place or
13 vehicle], section 12031(a)(c)(2) [criminal street gang member carrying a loaded gun], section
14 12031(a)(2)(f) [carry a loaded firearm on person or in vehicle without registration], section
15 12090 [tamper with identification marks on firearm], section 182(a)(1) [conspire to commit a
16 crime], section 186.22(a) [participating in a street gang.]

17 18. On or about August 27, 2007, a criminal complaint titled *People of the*
18 *State of California vs. David Lee*, case no. BF120391B was filed in Kern County Superior Court.
19 Count 1 pertained to another defendant. Count 2 alleged that respondent violated Penal Code
20 section 12031(a)(c)(2) [criminal street gang member carrying a loaded gun] with the
21 enhancement that he violated Penal Code section 186.22(B)(1) [in association with a street
22 gang.] Count 3 alleged that respondent violated Penal Code 12280(b) [possession of an assault
23 weapon] with the enhancement that he violated Penal Code section 186.22(B)(1) [in association
24 with a street gang.] Count 4 alleged that respondent violated Penal Code 12031(a)(2)(f) [carry a
25 loaded firearm on his person or in a vehicle without registration] with the enhancement that he
26 violated Penal Code section 186.22(B)(1) [in association with a street gang.]

27 19. On or about September 7, 2007, Respondent entered a plea of guilty to
28 violating Penal Code 12280(b) [possession of an assault weapon] pursuant to Penal Code section

1 859. All allegations were stricken. The remaining counts were dismissed. He was convicted
2 and sentenced as follows: the Court denied probation and imposed two years commitment in
3 prison with credit for twenty four days time served. He was ordered to provide two blood and
4 saliva samples for DNA testing, provide a right thumb print and palm print of each hand, pay
5 restitution and fines.

6 20. Therefore, respondent is subject to discipline based on his conviction of
7 violating Penal Code section 12280(b) [possession of an assault weapon], which is substantially
8 related to the practice of respiratory care and is in violation of code sections 3750(d), 3750(g),
9 3752 [substantially related conviction] and CCR 1399.370(a).

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

13 1. Revoking or suspending Respiratory Care Practitioner License Number
14 24148, issued to David Lee.

15 2. Ordering David Lee to pay the Respiratory Care Board the costs of the
16 investigation and enforcement of this case, and if placed on probation, the costs of probation
17 monitoring;

18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: January 13, 2009

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22 Original signed by Lianne Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant
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